**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 1596 of 2007**
**To**
**FIRST APPEAL No. 1626 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.M.MEHTA**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ? **- No.**

2 To be referred to the Reporter or not ?**- No.**

3 Whether their Lordships wish to see the fair copy of the judgment ?**- No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?**- No.**

5 Whether it is to be circulated to the civil judge ?**- No.**

==========

**THE SPL. LAND ACQ. OFFICER & 2 - Appellant(s)**
**Versus**
**ADMINISTRATOR OF VORA-SAMNI MADRESA - Defendant(s)**

==========

**Appearance :**
MR SUNIT SHAH, GP for Appellant (s) : 1 -3 in First Appeal Nos.1596 to 1610 of 2007

MS REETA CHANDARANA, AGP for Appellant(s) : 1 – 3 in First Appeal Nos.1611 of 1626 of 2007
MR KM SHETH for Defendant(s) : 1,

==========

**CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**

**Date : 24/07/2007**

**ORAL JUDGMENT**

1. The Special Land Acquisition Officer, Narmada Project, Unit-7, Bharuch and others, appellants-original opponents have filed these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Civil Procedure Code, 1908, challenging the judgment and award dated 30/4/2005 passed by the learned Civil Judge (SD), Bharuch in Land Acquisition Reference Case Nos.2385 of 1997 to 2415 of 1997. By the impugned judgment and award, the learned Judge was pleased to partly allow the Reference Cases and held that all the applicants are entitled to receive additional compensation at the rate Rs.32/- in Compensation Case No.65 of 1991. The learned Judge has also awarded 30% solatium and interest at the rate of 9% for the period of one year from the date of taking over the possession of the acquired lands and thereafter at the rate of 15% per annum of aggregated amount i.e. additional amount, solatium and 12% increase under Section 23(1-A) of the Act till the entire amount is fully paid or deposited.

2. Heard Ms.Reeta Chandarana, learned AGP for the appellants. On behalf of defendants, original claimants, Mr.K.M.Sheth, learned advocate appears.

3. The learned AGP Ms.Reeta Chandarana states that matter is covered by the judgment of this Court (Coram:J.M.Panchal, J.) dated 2/4/2007 in First Appeal No.896 of 2007 and others in the matter of Special Land Acquisition Officer vs. Niranjanaben Zaverbhai and others and therefore, with consent of parties and learned advocates, matter is taken up for final disposal.

4. Facts giving rise to the appeals are as under:

4.1) In this case, a proposal was made by the Executive Engineer, Narmada Project, Bharuch to the State Government to acquire agricultural lands of village Vorasamni, Taluka Vagra, District Bharuch, for the purpose of constructing Sadthala Sub Distributor Minor Canal under Narmada Project. On perusal of the said proposal, the Government was satisfied that the lands of village Vorasamni

mentioned in the said proposal were likely to be need for the said public purpose. In view of the same, the State Government has issued Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act') and the same was published on 24/9/1992. Thereafter necessary inquiry under Section 5 of the Act was made and a report, as contemplated by Section 5-A(2) of the Act, was forwarded by the Special Land Acquisition Officer to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of village Vorasamni specified in the notification published under section 4 of the Act were needed for the public purpose of construction of canal under Narmada Project. Therefore, a declaration was made under Section 6 of the said Act which provides for the declaration that land is required for a public purpose, which was published on 10/3/1993. The interested persons were thereafter served with the notices for determination of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed the

compensation. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated 6/6/1995, was pleased to award Rs.2.25 per sq. mt. for the acquired lands.

5. The claimants were of the opinion that the offer of compensation awarded to them was totally inadequate. Therefore, they submitted applications under Section 18 of the Act which provides for the references to Court, requiring the Special Land Acquisition Officer to refer to their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Bharuch, where they were numbered as Land Acquisition Reference Nos.2385 of 1997 to 2415 of 1997, Main Land Acquisition Reference Case No.2408 of 1997.

**Proceeding before the Trial Court:**

6. Before the learned Judge, the claimants have

contended that the compensation awarded by the Land Acquisition Officer is too meager, unjust and improper and it was further submitted that considering the irrigation facilities which were available to the claimants, fertility, potentiality of the acquired lands and also annual yield, which were fetching by the claimants from the acquired lands, the amount awarded by the Land Acquisition Officer is unjust, improper and illegal. Claimants further submitted that they were cultivating their lands by applying modern techniques as such they were taking two crops in a year like High breed Cotton, Nizer, Pigeon pea, vegetables, millet and wheat etc. It was further submitted that Land Acquisition Officer has not considered the relevant factors for determination of the value of the acquired lands. It was further submitted that Land Acquisition Officer had considered under value of sale deed, which were against the interest of the claimants. It was further contended that they are entitled for Rs.1,482/60 per Are along with the consequential benefits under the provisions of the Act. It was further submitted that Land Acquisition Officer has not considered the relevant

factors and therefore, they are entitled for additional compensation.

7. It may be noted that initially the claimants have claimed the compensation at lower rate and thereafter, they applied for the enhancement of their claim, preferring an application and the said application was allowed and as such the claim has been enhanced at the rate of Rs.50/- per sq. mtr.

8. The opponents were served and the opponents have filed their written statements. As the contentions of the written statements of opponents are similar, those have been considered jointly. It was contended that the references are misconceived and not maintainable in the eye of law. It was further contended that the award passed by the Special Land Acquisition Officer is legal and proper. It was further contended that notice under Section 9(3) were served to the claimants and opportunities of being heard were also offered to the claimants, but they failed to make representation and also failed to produce documentary evidence. It was further contended that on the contrary, after taking into

consideration five years sale instances for the lands of same vicinity, the Special Land Acquisition Officer has awarded just and adequate amount of compensation of the acquired lands and therefore, the claims of the claimants deserve to be dismissed.

9. Before the Special Land Acquisition Officer, the claimants have produced following documentary as well as oral evidences:

| **Sr. No.** | **Particulars of documents** | **Exh. No.** |
|---|---|---|
| 1 | Certified copies of village form no.7/12, pertaining to the claimants lands | 107 to 131 |
| 2 | Certified copies of the judgments delivered by reference court | 132 to 134 |
| 3 | Map of Vagra Taluka | 135 |
| 4 | Average price list | 152, 154 and 155 |
| 5 | Average price list issued by the APMC, Bharuch | 157 |
| | **Oral Evidences** | |
| 1 | Deposition of claimant-Ibrahim Vali Asmal Musa | 146 |
| 2 | Deposition of Mr.Hanuman Ishwarbhai Patel | 151 |
| 3 | Deposition of Mr.Sanjaybhai Krushnakant Patel | 153 |

| Sr. No. | Particulars of documents | Exh. No. |
|---|---|---|
| 4 | Deposition of Mahendrabhai Nanubhai Nanawati | 156 |

10.Before the learned Judge, deposition of claimant-Ibrahim Vali Asmal Musa is recorded at Exh.146. He has deposed as to the Notifications under Section 4 and 6 of the Act and also as to the publication of the award under Section 11 of the Act and awarded amount. He has further deposed that he is conversant with the local situation with the acquired lands. He has further deposed that initially the claimants have claimed Rs.1400/- per Are by way of compensation and now, they have claimed Rs.50/- per sq. mtr. as they got sufficient evidence, under reference was having good fertility, potentiality and were of well leveled. He has further deposed that acquired lands were jirayat in nature and claimants were growing the crops of cotton in first seasons and in second season, they have grown crop of millet. It is further contended that the claimants were growing the crop of pigeon pea in first season and crop of millet in a second season. He deposed that the

claimants, who were growing the crop of cotton, getting 28 quintals per acre in a year and they used to sell it to APMC, Bharuch and Vagra Taluka Co.Op. Purchasing and Sell Union Ltd., and also to Vagra Co. Op. Marketing and Processing Society Ltd. The average price list, issued by the above institutions has been produced by the claimants and most particularly certificate issued by APMC, Bharuch has been produced at Exh.157. He further deposed that the claimants, who were growing the crop of cotton were getting 28 quintals per acre and after multiplying the said quantity with the average price Rs.865/-, they were getting Rs.24,200/- as a gross income out of crop of cotton. After deducting 35% towards cultivation cost, they were getting Rs.15,700/- as a net income out of crop of cotton. He further deposed that after taking crop of cotton, they were growing the crop of millet in a second season and were getting quantity of 15 quintals of millet and the average price thereof at the relevant time was Rs.396/- per quintal, and after multiplying the said quantity with the average price, they were getting Rs.5,900/- as a gross income, and after deducting

35% towards cultivation cost, they were getting Rs.3,800/- as a net income out of crop of millet. He further deposed that some of the claimants were growing the crop of pigeon pea and were getting two falls of green pigeon pea. He further deposed that 40 quintals crop of green pigeon pea per acre and average price Rs.1,143/- per quintal and after multiplying the said quantity with the average price, they were getting Rs.45,700/- as a gross income and after deducting 35% towards cultivation cost, they were getting Rs.29,700/- as a net income out of crop of green pigeon pea. He further deposed that thereafter, they were also getting the quantity of 12 quintals of dry pigeon pea, and the average price thereof Rs.1,318/- per quintal and after multiplying the said quantity with the average price, they were getting Rs.15,800/- as a gross income and after deducting 35% towards cultivation cost they were getting Rs.10,300/- as a net income out of crop of dry pigeon pea. In all the claimants, who were growing the crop of pigeon pea were getting Rs.40,000/- per acre as a net income, and thereafter, they were also growing the crop of millet in second season and were getting

Rs.38,000/- as a net income per acre as said earlier.

11. So far as the quantity of the above crop is concerned, the claimants have not produced any evidence, therefore, the version as to the quantity of the above crops cannot be accepted. So far as the price of above commodities is concerned, the claimants have produced the average price list at Exh.157 was issued by APMC, Bharuch. The said document is proved during the deposition of Shri Mahendra N. Nanawati at Exh.156, who happens to be the Secretary of APMC, Bharuch and the said institution has been established under APMC Act, having two Government nominated directors, therefore, the witness Nanawati is in a position to as good as a public servant, he has produced the average price list at Exh.157, which has been prepared by him. For the same, he has also relied upon judgment of the Hon'ble Apex Court in the case of Land Acquisition Officer, Revenue Divisional Officer, Chittor vs. L.Kamalamma and others, reported in 1998 (2) SCC 385 and also other judgments also.

12.After going through the above stated judgment, the learned Judge has observed that the Hon'ble Supreme Court as well as the Hon'ble Gujarat High Court repeatedly considered cultivation cost at the rate of 50% of the gross income and also considered multiplied of 10 as just and proper. Therefore, the claimants' version as to the cultivation cost at the rate of 35% cannot be accepted. The learned Judge after considering the same, has arrived at the following findings:

> “The claimants who were growing the crop of Cotton were getting the quantity of 28 quintals. If we multiply it by its average price Rs.865/-, it will come to 24,200/- and after deducting 50% towards cultivation cost, it will Rs.12,100/- and after dividing it by 4000 sq. mtr., it will come to 3.025. Similarly the claimants, who were growing the crop of millet in second season, were getting quantity of 15 quintals. If we multiply it by 396/-, it will come to Rs.5,900/- and after deducting 50% towards cultivation cost, it

will come to Rs.2,950/- and after dividing it by 4000 sq. mtr., it will come to 0.737. The claimants who were growing the pigeon pea were getting two falls of green pigeon pea. If we accept the quantity of green pigeon pea at 40 quintals, and if we multiply it by average price Rs.1,143/-, then it will come to Rs.45,700/- and after deducting 50% towards cultivation cost, it will come to Rs.22,850/- and after dividing it by 4000 sq. mtr., it will come to 5.712. The claimants were also getting the quantity of dry pigeon pea of 12 quintals. If we multiply it by prevailing price of Rs.1,318/- per quintal, it will come to Rs.15,800/- and after deducting the cultivation cost at the rate of 50%, it will come to Rs.7,900/- and after dividing it by 4000 sq. mtr., it will come to 1.97. The claimants were also growing the crop of millet in as second season and were getting the net income as said earlier. After considering the crop of cotton and millet, the annual yield per sq. mtr., would Rs.3.76/- and after applying multiplier of 10, it will come to

rs.37.60 which would be the value of the acquired lands after considering the crop of millet and cotton. Similarly, the annual yield after considering the crop of pigeon pea and millet would be 8.42 per sq. mtr. and after applying multiplier 10, it will come to Rs.84.25. After accumulating the above value, it will come to Rs.12185. If we divide it by two crops, it will come to rs.62.90 per sq. mtr. The learned Judge after considering all the above, has mentioned that the claimant who has to get compensation would naturally exaggerate the version with a view to secure higher rate of compensation. Therefore, inspite of accepting the version of the claimant, if it is minimised and accepted Rs.32/- per sq. mtr. by way of additional compensation along with the consequential benefits as per the Act, it would be just and proper value of the acquired lands. On behalf of the claimants, another witness have been examined for the purpose of average price of commodities vide Exh.151 and 153. However, the learned Judge has considered only

deposition of Shri Nanavati at Exh.156 and the average price at Exh.157 which covered the price of commodities, therefore, other evidence has not been considered. The claimants have also based their claim on previously decided judgment at Exh.132 to 134 i.e. judgment and award passed by that very Court dated 25/8/2004 in Land Reference Case Nos.1462 of 1997 to 1473 of 1997, Main Case No.1466 of 1997. The claimants have stated that in this case, the land references were partly allowed and the learned Judge has held that the claimants are entitled to receive an additional amount of compensation at the rate of Rs.40.90 per sq. mtr. for their acquired lands over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.2.10 per sq. mtr., as per the provisions of the Land Acquisition Act. It may be noted that Land Acquisition Officer has awarded compensation at the rate of Rs.2.10 and therefore, the learned Judge in all awarded Rs.43/- per sq. mtr. In view of this aforesaid evidence on record, the learned

Judge has held that the claimants are entitled to get additional compensation of Rs.32/- per sq. mtr. over and above the compensation awarded by the Special Land Acquisition Officer and therefore, in all the compensation awarded is Rs.34.25 per sq. mtr.

13.It is also observed by the learned Judge that the opponent no.1 has produced the documentary evidence at Exh.164 i.e. copy of the impugned award which does not required to be considered as it is already been produced by the claimants. He has also produced Exh.162 and 163 i.e. the statements of five years' sale instances. The same could not be considered as substantial piece of evidence as those are mere statements and facts under those statements have not been proved by the other side, by producing the copy of the sale deed. Thus, learned Judge has also awarded increase at the rate of 12% from the date of publication of Notification under Section 4 of the Act i.e. 24/9/1992 to the date of the award passed by the Special Land Acquisition Officer i.e. dated 6/6/1995 as provided under Section 23(1-A) of the Act. The learned

Judge has also held that the claimants are entitled to get 30% solatium and running interest at the rate of 9% per annum for the period of one year from the date of taking over the possession of the acquired lands, thereafter, at the rate of 15% per annum of aggregated amount i.e. additional amount, solatium and 12 increase under Section 23(1-A) of the Act till entire amount is fully paid or deposited.

14.Being aggrieved and dissatisfied with the said order of the learned Judge, the State Government has filed these appeals and on behalf of the Government, learned AGP, Ms.Reeta Chandarana has tried to assail the order of the learned Judge. Mr.K.M.Sheth, learned advocate for the claimants has tried to support the aforesaid award and stated that the learned Judge has given proper reasons in this behalf.

15.I have also considered the judgment and award at Exh.132 to 134, passed by that very Court dated 25/8/2004 in Land Reference Case Nos.1462 of 1997 to 1473 of 1997, Main Case No.1466 of 1997. It may

be noted that in the said judgment, the State Government has filed appeals being First Appeal Nos.896 of 2007 to 907 of 2007 in the case of Special Land Acquisition Officer vs. Niranjanaben Zaverbhai and others, which are decided by this Court (Coram:J.M.Panchal, J.) on 2/4/2007. I have also considered another judgment of this Court (Coram:J.M.Panchal, J.) dated 2/4/2007 in First Appeal Nos.3067 of 2006 to 3086 of 2006 in the case of Special Land Acquisition Officer vs. Amarsang Galabsang and others.

16.As regards cases of Niranjanaben Zaverbhai and others and Amarsang Galabsang and others, this Court (Coram:J.M.Panchal, J.) has relied upon the judgment of the Hon'ble Supreme Court in the case of Special Land Acquisition, Davangere vs. P.Veerabhadarappa, etc. etc., reported in AIR 1984 SC 774 and ultimately, awarded compensation of Rs.43/- per sq. mtr. in all in both the cases and ultimately, dismissed the appeals of the Government.

17.Similarly, in the case of the Special Land

Acquisition Officer vs. Memudben Bharatsang Jasbha and another in First Appeal No.3183 of 2006 and others, decided by this Court on 9/7/2007, this Court has held that the claimants are entitled to get compensation of Rs.43/- in all per sq. mtr. and dismissed the appeals of the Government.

18.I have also considered the judgment of the Hon'ble Apex Court in the case of State of Gujarat and others vs. Rama Rana and others, reported in (1997) 38-3 GLR 1954, where the Hon,ble Apex Court has held under Section 23 of the Land Acquisition Act, 1894 that one of the methods of determination of compensation, in absence of best evidence, namely, sale deeds, is the realised value of the crop. Unfortunately, neither claimants nor the Government took any steps to adduce the best evidence. The Reference Court has accepted the evidence of the Sarpanch to be that of a reliable person. Therefore, Court proceeds on that premise. The appropriate multiplier should be of 10 years as settled by several judgments of this Court. Necessarily, 50% of the net value towards cultivation expenses requires to be deducted.

19. In view of the above cited judgments of this Court as well as judgment of the Hon'ble Supreme Court, present appeals are also required to be dismissed.

20. In view of the same, the judgment of the learned Trial Judge is confirmed. This Court does not find any material for quashing and setting aside the judgment of the learned Trial Judge as the learned Judge has given very cogent and convincing reasons in this behalf.

21. There are general consensus between the learned counsels for the parties that on the basis of the previous award relating to the lands of Village Saran, as confirmed by the High Court, the claimants would be entitled to compensation awarded by the learned Trial Judge. Thus, this Court does not find any merits in the appeals and, therefore, the appeals are liable to be dismissed.

22. For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in

terms of this judgment immediately.

23. The learned advocate for the claimants desires to withdraw the cross-objection. He is permitted to withdraw the same.

(K.M.Mehta, J.)

(ila)